

COTTONWOOD HEIGHTS

RESOLUTION No. 2022-06

A RESOLUTION APPROVING AN EVENT AGREEMENT WITH BROWN'S AMUSEMENTS INC. (2022-2024 BUTLERVILLE DAYS)

WHEREAS, the city council (the "*Council*") of the city of Cottonwood Heights (the "*City*") met in regular session on 18 January 2022 to consider, among other things, approving and ratifying an "Event Agreement" (the "*Agreement*") with Brown's Amusements Inc. ("*Provider*") whereunder Provider would provide and operate a "midway" (consisting of rides, games and food booths) at the City's "Butlerville Days" community event on agreed-upon dates in July 2022, July 2023 and July 2024 on the terms and conditions specified in the Agreement; and

WHEREAS, the Council has reviewed the form of the Agreement, a photocopy of which is annexed hereto; and

WHEREAS, after careful consideration, the Council has determined that it is in the best interests of the health, safety and welfare of the citizens of the City to approve and ratify the City's entry into the Agreement as proposed;

NOW, THEREFORE, BE IT RESOLVED by the city council of the city of Cottonwood Heights that the attached Agreement is hereby approved and ratified, and that the City's mayor and recorder are authorized and directed to execute and deliver the Agreement on behalf of the City.

This Resolution, assigned no. 2022-06, shall take effect immediately upon passage.

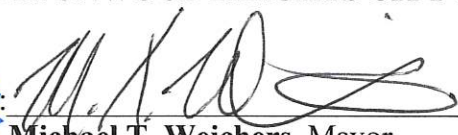
PASSED AND APPROVED effective 18 January 2022.

ATTEST:

By: 
Paula Melgar, Recorder



COTTONWOOD HEIGHTS CITY COUNCIL

By: 
Michael T. Weichers, Mayor

VOTING:

Michael T. Weichers	Yea <input checked="" type="checkbox"/> Nay <input type="checkbox"/>
Douglas Petersen	Yea <input checked="" type="checkbox"/> Nay <input type="checkbox"/>
J. Scott Bracken	Yea <input checked="" type="checkbox"/> Nay <input type="checkbox"/>
Shawn E. Newell	Yea <input checked="" type="checkbox"/> Nay <input type="checkbox"/>
Ellen Birrell	Yea <input checked="" type="checkbox"/> Nay <input type="checkbox"/>

DEPOSITED in the office of the City Recorder this 18th day of January 2022.

RECORDED this 19 day of January 2022.

Event Agreement

THIS EVENT AGREEMENT (this "*Agreement*") is entered into effective 18 January 2022 between **BROWN'S AMUSEMENTS INC.**, an Arizona corporation whose address is 550 West Baseline Rd., Suite 102-353, Mesa, AZ 85210 ("*Contractor*"), and the city of **COTTONWOOD HEIGHTS**, a Utah municipality whose address is 2277 East Bengal Blvd., Cottonwood Heights, UT 84121 ("*City*").

Section 1. **Background.** City has scheduled the next three annual stagings of City's "Butlerville Days" community event (each, an "*Event*") for (a) 28-30 July 2022, (b) a mutually-agreeable Thursday, Friday and Saturday in July 2023, and (c) a mutually-agreeable Thursday, Friday and Saturday in July 2024, on the public property surrounding the Cottonwood Heights Recreation Center near 2700 East 7500 South in City (the "*Event Site*"); provided, however, that if the parties are unable to mutually agree on the Event dates or hours of operation for 2023 or for 2024 by 1 January 2023 or by 1 January 2024, respectively, then either party may terminate this Agreement upon written notice to the other party given before 15 January 2023 or 15 January 2024, respectively. As part of each Event, City desires to provide recreational opportunities to Event participants in the form of family-type rides, games and other activities. Contractor is in the business of providing one such service, and has proposed to provide (as specified in this Agreement) all necessary or advisable equipment, facilities, supervision, etc. for a "midway" (the "*Midway*") in connection with each Event. The Midway involves the provision of carnival-type rides and games, as well as booths for the sale of food items, as further described below. The Midway activities offered by Contractor are generally described on Contractor's website at brownsamusements.com.

Section 2. **Midway.** Contractor shall perform for City the following described services (the "*Services*") throughout each Event:

(a) **Activities.** Contractor shall provide and operate the following activities (the "*Activities*") for the Midway:

(i) **Rides.** 18 (or such smaller number as City may approve for an Event) carnival-type rides ("*Rides*") appropriate for adults and for children in attractive, clean and safe working condition. All Rides shall comply with all applicable legal requirements and industry "best practices" standards, and shall be safety-inspected before, and at any recommended intervals during, their use hereunder. All Rides shall be continuously operated and supervised by qualified employees of Contractor. Charges for participation on the Rides shall be as shown on the attached exhibit (the "*Exhibit*").

(ii) **Games.** Seven (or such smaller number as City may approve for an Event) carnival-type games ("*Games*") appropriate for adults and for children, continuously operated and supervised by qualified employees of Contractor. Charges for participation in the Games shall be as shown on the Exhibit.

(iii) **Food.** Four (or such smaller number as City may approve for an Event) concession trailers (collectively, "*Booths*"), continuously operated and supervised by qualified employees of Contractor. The food items prepared and sold by Contractor shall be prepared in accordance with all applicable legal and food industry standards, including the requirements of the Salt Lake County Health Department (the "*Health Department*") and all applicable "safe food handling" standards. Food sales shall operate only from Contractor's City-approved Booths on the

spaces assigned to Contractor. Walking through the audience to sell food or any other items is prohibited. Beverages may not be sold or served in cans or glass containers.

Contractor shall sell only the food items specified on the Exhibit for the prices shown on the Exhibit. If City obtains a sponsorship from a soft-drink company, such as Coca-Cola, which requires City to limit soft drink offerings at the Movie (defined below) and/or one or more Event(s) to soft drinks manufactured by such sponsor, then City will so inform Contractor by the March 22nd immediately prior to such Event. If City so acts, then Contractor may by 5:00 p.m. on the April 1st immediately prior to such Event terminate this Agreement as to such Event; provided that if Contractor fails to so terminate, then Contractor's soft drink offerings at the Movie and such Event shall conform to the requirements of such sponsorship.

Contractor's Booths shall comply with the following minimum requirements. Failure to meet such requirements may result in Contractor being prohibited from conducting business from the Booth until full compliance occurs:

(A) A roof, awning or other covering, impermeable to weather, over the entire food preparation, service, clean-up and storage area;

(B) Two side walls (not screening) which will reduce the entry of dust and dirt, and exclude non-authorized persons;

(C) The front service wall shall be a counter, half-wall, or table draped to the floor. The back wall may be open for employee access, or solid if desired;

(D) Except for trailers, the floor must be plywood laid over the grass field of the host park, with Contractor supplying the plywood flooring for its Booth;

(E) All cooking equipment utilized at the Booth must be at least four feet from the public by roping off or other means for safety reasons, FDA/DFP Guide (Conference for Food Protections);

(F) All open flame cooking devices must meet City's fire code requirements; and

(G) Each Booth must be equipped with a hand wash station. Hand wash stations in restrooms do not qualify. At minimum, there must be flowing water from a container with a handled spigot (which spigot must stay open on its own so the person who is washing his hands has both hands free for washing), a catch basin or bucket, liquid hand soap, and paper towels. **BOOTHS WITHOUT HAND WASH STATIONS WILL BE GROUNDS FOR IMMEDIATE CLOSURE.**

(H) Only people working in a Booth will be allowed in the Booth. All others must remain in front of the Booth.

(iv) Operation During Movie. City may stage or sponsor an outdoor movie event (the "Movie") for the public after dark on the first night of an Event. If that occurs, then the Activities shall be conducted so as to not unreasonably interfere with the audience's enjoyment of or

participation in Movie. To that end, music/sound from the Rides, Games and Booths shall be turned off and all lighting of such shall be minimized during the Movie.

(v) Inspections. City, through its police department, through Unified Fire Authority, or through other designees, may inspect any or all of the Activities at any time, or from time to time, before or during each Event to determine their safety. Contractor promptly shall correct any safety issues or violations noted by City or its designees, and shall not operate any Activity affected by a safety issue until that issue is fully corrected at Contractor's cost.

(b) Limitation. The Activities specified in subsection 2(a), above, are the only activities that Contractor may provide at each Event. Without limiting the generality of the foregoing, Contractor may not sell novelties, toys or apparel, including, without limitation, "glow sticks" or other glow in the dark items.

(c) Supervision. Contractor will staff the Activities with an adequate number of qualified, adult attendants, who shall, among other things, operate the Activities, safeguard Contractor's property and prevent Contractor's property from being used or occupied by any unauthorized person throughout an Event (including all nights between on the day before and ending the day after an Event) and during the entire time that any of Contractor's property is on the Event Site.

(d) Refuse and Waste. City shall provide portable restrooms beginning on the morning of day before each Event. From Contractor's entry on the Event Site on (typically the day before an Event) through Contractor's departure from the Event Site (typically the day after an Event), City also will provide four "grey water" tanks for the use by Contractor's personnel; provided that Contractor shall reimburse City for the full cost of such tanks. Contractor shall regularly (at least every two hours) inspect its area of the Event Site and pick up all trash, debris, etc. Contractor shall store and remove all trash, debris and other waste resulting from the Activities; provided that City shall remove all trash placed in City's trash containers at each Event. By 6:00 p.m. on the day after each Event, Contractor also will inspect the area where Contractor provided the Services and thoroughly clean up any debris. Contractor will leave its portion of the Event Site in similar condition as received.

(e) Electricity. Contractor shall provide its own electrical power for the Activities. The noise from generators supplying such power shall be minimized to the extent reasonably possible during the Movie.

(f) Set-Up; Operation; and Removal. Contractor may stage (but not operate) its rides, booths and equipment (collectively, "Equipment") on the southeast parking lot (the "Southeast Parking Lot") of Butler Middle School (which adjoins the Event Site) on the day before each Event, provided that all deliveries or work shall be performed between 7:00 a.m. and 10:00 p.m. Contractor may set-up/stage (but not operate) the Equipment at its City-designated location on the Event Site between 8:00 a.m. and 10:00 p.m. on the day before each Event and between 8:00 a.m. and 3:00 p.m. on the first day of each Event. **All set-up must be completed by that deadline.** The Activities will (i) be fully set up by 3:00 p.m. and operational by 4:00 p.m. on the first and second days of each Event and by 12:00 p.m. on the third day of each Event, and (ii) will operate until 10:00 p.m. on the first day of each Event and until 11:00 p.m. on the second and third days of each Event. Disassembly and removal of the Equipment from the Event Site may occur between 8:00 a.m. and 8:00 p.m. on the day after each Event. Disassembled Equipment may be stored in the Southeast Parking Lot until 12:00

p.m. on the second day after each Event. **All breakdown and removal must be completed by those deadlines.**

Set-up, take-down and removal shall be performed by Contractor in as quiet a manner as reasonably possible in recognition of the residences surrounding the Event Site. Any of Contractor's personnel staying overnight at the Event Site (from the day before until the day after each Event) shall not smoke, drink alcoholic beverages, and otherwise shall conduct themselves in a quiet, respectful manner in compliance with all applicable law, rules and regulations, and the requirements of the 19 November 2018 "Memorandum" from City's Community & Economic Development Director that previously has been supplied to Contractor and which also may be attached as an exhibit to this Agreement.

(g) *Right to Cease Operations.* City may require Contractor to cease operating any or all of the Activities at any time that City reasonably determines that hazardous conditions exist or that public safety otherwise is at risk.

Section 3. **City's Obligations.**

(a) *Marketing.* City shall provide all marketing for the Activities as part of its advertising of each Event, including, without limitation, marketing on City's website (www.ch.utah.gov); City's social media channels (Facebook, Twitter, Instagram, and YouTube); radio public service announcements; broadcast television appearances; direct mail; and City's newsletter. Contractor timely shall provide electronic images of its logo for inclusion in City's marketing materials, and hereby consents to such use by City.

(b) *Additional.* In connection with each Event, from set-up through take-down and removal as described above, City shall provide (a) a source of culinary water; (b) a one-yard trash container for Contractor's use; (c) the restroom facilities as specified in Section 2(d) above; and (d) a reasonable level of security through City's police department.

Section 4. **Permits and Licenses.** The following permits and licenses are required:

(a) *Food Handler's Permit.* Contractor shall assure that a current food handler's permit issued by the Health Department is in effect for at least one person who must be on premises at each of the Booths at all times. City advises that the food handler's permit currently costs \$30 and must be obtained before applying for the temporary event permit described below. **A copy of Contractor's food handler's permit must be provided to City no later than the July 1st before each Event.**

(b) *Temporary Event Permit.* Contractor also must obtain a temporary event permit from the Health Department for the Booths that is of sufficient duration to cover the entire period of time that Contractor conducts the Activities. City advises that such permit costs currently between \$65 and \$95 per day, and may be obtained from the Health Department between 9:00 a.m. and 4:00 p.m., Monday through Friday, at 788 East Woodoak Lane (enter from 900 East at 5400 South). **A copy of Contractor's temporary event permit must be submitted to City on or before the July 1st before each Event.**

Additional information concerning such health department permits is available through the Health Department's web site (www.slvhealth.org, under the "Environmental Health" and "Food" sections).

(c) Temporary Sales Tax License. Contractor must obtain a sales tax license from the Utah State Tax Commission, maintain appropriate records and make appropriate sales tax payments. This will be coordinated by each Event's chairperson.

The originals of Contractor's permits and licenses must be available at Contractor's Booths throughout their operation. Contractor's failure to timely provide copies or originals, as applicable, of the foregoing permits and licenses may result in revocation of this Agreement by City.

(d) Security. Placement of any Equipment or other property of Contractor on or about the Event Site shall be at Contractor's own risk. City shall have absolutely no liability for any theft, loss, damage, etc. occurring to Contractor's possessions before, during or after an Event.

Section 5. Compensation. In addition to any reimbursement of City's costs specified in this Agreement (see, e.g., Section 2[d], above), Contractor shall pay to City an amount equal to the sum of the following:

(a) Base Fee. \$20,000 (the "Base Fee"); plus

(b) Rides Sales. Any additional amount in excess of the Base Fee which is derived from Contractor's sales of admission tickets to the Rides (the "Ride Sales"), determined as follows: (i) 25% of Ride Sales revenue (net of all sales and other taxes) up to \$75,000; plus (ii) 30% of Ride Sales revenue (net of sales and other taxes) above \$75,000.

(For example, if the Ride Sales revenue (net of all sales and other taxes) totals \$100,000, then Sponsor's portion of such revenue would be $[(\$75,000 \times .25) + (\$25,000 \times .30)] - \$20,000 = \$6,250$); plus

(c) Games. \$150 for each of the Games (the "Games Fee"); plus

(d) Booths. \$200 for each of the Booths (the "Booths Fee").

The Base Fee shall be paid to City's representative by noon on the day before each Event. At noon on the day after each Event, or such later time as City's representative reasonably shall designate, Contractor shall (y) meet with City's representative to disclose the results of the Ride Sales, and (z) remit to City the Games Fee, the Booths Fee and City's portion of Ride Sales. Contractor shall maintain accurate books and records concerning all Ride Sales, and shall safeguard such records and make them available for City's inspection promptly upon City's request at any time during the six month period after each Event.

Section 6. Age Standards. Contractor shall enforce appropriate age standards for the Rides to assure public safety.

Section 7. Insurance. Contractor shall maintain in full force and effect a broad form comprehensive workmen's compensation, bodily injury and property damage liability insurance policy or policies against claims for damage or injury to persons or property arising out of any of the Activity or the Services (i.e.—whether Equipment-based, supervision-based, or otherwise) in connection with each Event. Such policy shall be maintained on the minimum basis of Five Million

Dollars (\$5,000,000.00) combined single limit. Contractor shall cause City, Cottonwood Heights Parks and Recreation Service Area ("*CHPRSA*"), Canyons School District ("*CSD*"), and their respective officers, employees and other designees to be named as additional insureds under such policy, and shall provide to City a certificate evidencing such insurance coverage at least three business days before each Event. All insurance required to be carried hereunder shall be with companies, on forms and with loss payable clauses reasonably satisfactory to City. All such policies shall be written as primary policies, not contributing with and not in excess of coverage which City may carry.

Section 8. **Hold Harmless Undertaking; Repair.**

(a) **Hold Harmless Undertaking.** Contractor agrees, covenants, and undertakes to indemnify, hold free and harmless, assume liability for, and defend City, CHPRSA, CSD and their respective officers, employees, agents, servants and representatives (collectively, the "*Indemnitees*") from any and all losses, costs, and expenses, including but not limited to monetary damages, attorney's fees, investigative and discovery costs, court costs, fines, penalties, increased taxes, and all other sums, that any of the Indemnitees may incur, face, pay or become obligated to pay on account of any, all, and every demand for claim or assertion of liability, or any claim or action thereon, arising or alleged to have arisen out of any of the Services, the Activities, or this Agreement. The foregoing indemnities, etc. shall not, however, be deemed to waive or modify any rights, defenses, protections or limits of liability of City against third parties under the "Governmental Immunity Act of Utah" (UTAH CODE ANN. § 63G-7-101, *et seq.*).

(b) **Repair.** Contractor promptly shall fully repair, in a good workmanlike and finished manner, any and all damage to the Event Site arising from or attributable to Contractor's activities, including, without limitation, cleaning up trash and debris and repairing any damage to the lawns at the Event Site caused by the Activities.

Section 9. **General.** This Agreement shall be interpreted in accordance with Utah law. Section headings are for convenience only. Time is the essence of this Agreement. This Agreement may only be modified in a writing signed by both parties. This Agreement may be executed and delivered electronically, with the same legal effect as manual execution and physical delivery. In the event of any dispute concerning this Agreement, the prevailing party shall be entitled to an award of its attorneys fees and costs, whether incurred with or without suit, at trial, on appeal, or in any bankruptcy or insolvency proceeding. If any portion of this Agreement is deemed unenforceable or invalid by a court of competent jurisdiction, such portion shall be deemed severed from this Agreement to the extent of such unenforceability or invalidity.

DATED effective the date first-above written.

CONTRACTOR:

BROWN'S AMUSEMENTS INC.,
an Arizona corporation

By: _____
Sherry Brown, President

Dollars (\$5,000,000.00) combined single limit. Contractor shall cause City, Cottonwood Heights Parks and Recreation Service Area ("CHPRSA"), Canyons School District ("CSD"), and their respective officers, employees and other designees to be named as additional insureds under such policy, and shall provide to City a certificate evidencing such insurance coverage at least three business days before each Event. All insurance required to be carried hereunder shall be with companies, on forms and with loss payable clauses reasonably satisfactory to City. All such policies shall be written as primary policies, not contributing with and not in excess of coverage which City may carry.

Section 8. Hold Harmless Undertaking; Repair.

(a) Hold Harmless Undertaking. Contractor agrees, covenants, and undertakes to indemnify, hold free and harmless, assume liability for, and defend City, CHPRSA, CSD and their respective officers, employees, agents, servants and representatives (collectively, the "Indemnitees") from any and all losses, costs, and expenses, including but not limited to monetary damages, attorney's fees, investigative and discovery costs, court costs, fines, penalties, increased taxes, and all other sums, that any of the Indemnitees may incur, face, pay or become obligated to pay on account of any, all, and every demand for claim or assertion of liability, or any claim or action thereon, arising or alleged to have arisen out of any of the Services, the Activities, or this Agreement. The foregoing indemnities, etc. shall not, however, be deemed to waive or modify any rights, defenses, protections or limits of liability of City against third parties under the "Governmental Immunity Act of Utah" (UTAH CODE ANN. § 63G-7-101, *et seq.*).

(b) Repair. Contractor promptly shall fully repair, in a good workmanlike and finished manner, any and all damage to the Event Site arising from or attributable to Contractor's activities, including, without limitation, cleaning up trash and debris and repairing any damage to the lawns at the Event Site caused by the Activities.

Section 9. General. This Agreement shall be interpreted in accordance with Utah law. Section headings are for convenience only. Time is the essence of this Agreement. This Agreement may only be modified in a writing signed by both parties. This Agreement may be executed and delivered electronically, with the same legal effect as manual execution and physical delivery. In the event of any dispute concerning this Agreement, the prevailing party shall be entitled to an award of its attorneys fees and costs, whether incurred with or without suit, at trial, on appeal, or in any bankruptcy or insolvency proceeding. If any portion of this Agreement is deemed unenforceable or invalid by a court of competent jurisdiction, such portion shall be deemed severed from this Agreement to the extent of such unenforceability or invalidity.

DATED effective the date first-above written.

CONTRACTOR:

BROWN'S AMUSEMENTS INC.,
an Arizona corporation

By: Sherry Brown
Sherry Brown, President

CITY:

ATTEST:

COTTONWOOD HEIGHTS, a Utah municipality

By: 

Paula Melgar, Recorder



By: 

Michael T. Weichers, Mayor

Exhibit to Event Agreement

(Listing of Prices for Rides and Description of and Prices for Food Items)

1. Ticket pricing shall be \$1.00 per ticket. Tickets are transferable but not refundable.
2. Each ride shall cost the equivalent of no more than \$1.00 on the Thursday of each Event.
3. City may pre-sell one-day wrist bands for either day of each Event for \$25 up to commencement of that Event. As of commencement of each Event, City shall account to Contractor concerning all wrist band presales by City and promptly shall remit to Contractor all resulting proceeds.

Following commencement of each Event, Contractor shall handle all sales of one-day wrist bands at a price of \$35 each.

Wrist bands are not transferable or refundable.

3. Rides and prices:

CARTOONS KID RIDE	3 TICKETS
EXPO WHEEL	5 TICKETS
GRAVITRON	5 TICKETS
GROOVY BUS	4 TICKETS
MOTORCYCLE JUMP	4 TICKETS
MERRY GO ROUND	4 TICKETS
QUAD RUNNER	4 TICKETS
RAIDERS	4 TICKETS
ROUND UP	5 TICKETS
SKY FIGHTER	3 TICKETS
SKY RACER	4 TICKETS
SOOPER JET	3 TICKETS
SUPER SIZZLER	5 TICKETS
TILT A WHIRL	5 TICKETS
WACKY SHACK FUN HOUSE	4 TICKETS
WILLY THE WHALE	3 TICKETS
YOYO	5 TICKETS
ZIPPER	5 TICKETS
JUMPING JUMBOS	4 TICKETS

**FREAK-OUT SPECTACULAR RIDE 6 TICKETS or WRISTBAND + 2
TICKETS**